IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5860 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO LTD

Versus

CHAMPABEN NATWARBHAI VASAVA

Appearance:

MS MEGHA JANI for Appellant

MR AJAY MEHTA for Opponents No. 1 to 6

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE J.R.VORA

Date of decision: 28/03/2001

ORAL JUDGEMENT (Per : MR.JUSTICE A.R.DAVE)

1. Heard learned Advocate Ms. Megha Jani for the appellant. She has submitted that the appellant be permitted to delete respondents Nos. 7 and 8 from the present proceedings as they are Driver and Owner respectively. Respondents Nos. 7 and 8 are permitted to be deleted from the present proceedings.

2. Admit. Learned Advocate Shri Ajay Mehta appears for respondents Nos. 1 to 6 and waives service. At the request of the learned advocates, the Appeal is finally heard today.

3. In this Appeal, the Appellant- Insurance Company has challenged the validity of the Award dated 6th May, 1999, passed below Exh.5 in Motor Accident Claim Petition No. 921 of 1998 by the Motor Accident Claims Tribunal (Auxiliary), Bharuch.

4. Brief facts of the present appeal are as under :

On 29th September, 1998, Natvarbhai Dashariyabhai Vasava expired in a motor accident and therefore Motor Accident Claim Petition No. 921 of 1998 has been filed by respondents Nos.1 to 6 before the Motor Accident Claims Tribunal (Auxiliary), Bharuch. In the said petition, an Application below Exh.5 has been filed by the said claimants under the provisions of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"). In the said claim Petition, it has been submitted by the respondents - claimants that a sum of Rs. 15 lacs should be awarded to the claimants who are the dependents of late Shri Natvarbhai Dashariyabhai Vasava.

5. The Application, which has been filed by the claimants under the provisions of Section 163-A of the Act, has been decided by an Award dated 6th May, 1999. By virtue of the said Award, a sum of Rs. 4,20,000/- has been awarded to the claimants along with the interest at the rate of 12% p.a. from the date of the application till the date of payment.

6. It has been submitted by learned Advocate Ms. Megha Jani appearing for the appellant that the main petition filed by the claimants is still pending and there are all chances that the claimants might withdraw the Motor Accident Claim Petition No. 921 of 1998 after getting the amount which has been awarded under the

impugned award. It has been submitted by her that if the main petition is not prosecuted further, and if, ultimately, it is found that the sum of Rs.4,20,000/- was not payable to the claimants, it would be difficult for the Insurance Company to recover the amount which might be paid to the claimants. It has been therefore submitted by Ms.Megha Jani, learned Advocate for the Appellant that the impugned award deserves to be quashed.

7. On the other hand, learned Advocate Shri Ajay Mehta appearing for the respondents - claimants has submitted that the claimants are, in fact, entitled to get more amount but only a portion of the amount has been awarded to them by the Tribunal in an award passed below Exh.5 in Motor Accident Claim Petition No. 921 of 1998. It has been submitted by him that the claimants are ready and willing to file an undertaking before the Tribunal that they will not withdraw the Motor Accident Claim Petition No. 921 of 1998 or they will not permit the said petition to be dismissed for default. Thus, it has been submitted by him that no harm would be caused to the appellant if the amount which has been directed to be disbursed by the Tribunal is permitted to be disbursed.

8. We have heard the learned Advocates and in view of the fact that the claimants are ready and willing to file an undertaking to the effect that they will proceed further with the Motor Accident Claim Petition No. 921 of 1998, we do not see any reason to interfere with the impugned award at this stage. We, however, direct that respondent No.1 shall file an undertaking on her behalf and on behalf of respondents Nos. 2 to 4, who are the minor children and respondents No. 5 and 6 shall also file undertakings before the Tribunal within four weeks from today, that the said respondents, who are claimants in the main petition, would not withdraw the Motor Accident Claim Petition No. 921 of 1998 or would not permit the said petition to be dismissed for default and they shall extend their cooperation to the Tribunal for getting the petition decided at an early date.

9. If such undertakings are filed before the Tribunal, in our opinion, there should not be any reason for the appellant to fear that the petition would be withdrawn by the original claimants or would be dismissed for default.

10. It is directed that the amount which has been awarded under the impugned award, shall be deposited with the Tribunal within six weeks from today. The sum of Rs. 25,000/- deposited by the appellant with this Court

should be transmitted to the Tribunal forthwith.

11. The amount which has been awarded, should be disbursed to the claimants in the manner shown hereinbelow.

40% of the amount which has been deposited may be permitted to be withdrawn by the original claimants, which should be paid by account payee cheques and the balance amount should be deposited in a Fixed Deposit with any Nationalised Bank for a period of 5 years in the name of the Nazir of the Tribunal and the Fixed Deposit Receipts shall be kept in possession of the Nazir of the Tribunal and no amount shall be permitted to be borrowed on the security of the fixed deposit. The interest which might accrue on the said deposit shall be given to the claimants. In what proportion the amount should be disbursed to the claimants should be decided by the Tribunal.

12. In view of the above directions, the Appeal stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.) (J.R. Vora, J.)
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